

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 11 2005

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

YONI ORLANDO RIOS-ROMERO,

Defendant - Appellant.

No. 04-2271
(D.C. Nos. CIV-04-72 and
CR-02-1860 MCA)
(D.N.M.)

ORDER
DENYING CERTIFICATE OF APPEALABILITY

Before **KELLY, O'BRIEN** and **TYMKOVICH**, Circuit Judges.

Yoni Orlando Rios-Romero, a federal inmate appearing pro se, seeks to appeal from the denial of his 28 U.S.C. § 2255 motion to vacate, set aside or correct his sentence. Because we determine that Mr. Rios-Romero has not made a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000), we deny a COA and dismiss the appeal.

The parties are familiar with the facts, and we need not restate them here. Mr. Rios-Romero claims that his counsel was ineffective for failing to object to certain convictions used to calculate his criminal history category. We do not

think that the magistrate judge's conclusion that Mr. Rios-Romero had not met his burden of demonstrating deficient performance or prejudice is reasonably debatable. See Strickland v. Washington, 466 U.S. 668, 687 (1984). One challenged conviction was in fact **not** used to calculate his criminal history, and the other was apparently valid, notwithstanding Mr. Rios-Romero's mere assertion that it had been dropped.

We DENY a COA and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge